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8		RE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10	STATE OF C	ZALIFORNIA
11	In the Matter of the Accusation Against:	Case No. 4469
12	GERARDO CASTILLO A.K.A. GERARDO CASTILLO RICO	
13	904 Elm Avenue Modesto, California 95351	ACCUSATION
14		
15	Intern Pharmacist Registration No. INT 22538	
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20		
	Virginia Herold (Complainant) bring	gs this Accusation solely in her official capacity
21	Virginia Herold (Complainant) bring as the Executive Officer of the Board of Pharma	
	as the Executive Officer of the Board of Pharma	
21	as the Executive Officer of the Board of Pharma	cy, Department of Consumer Affairs.  oard of Pharmacy (Board), Department of
21 22	as the Executive Officer of the Board of Pharma  2. On or about August 22, 2008, the Bo	cy, Department of Consumer Affairs.  oard of Pharmacy (Board), Department of stration Number INT 22538 to Gerardo Castillo
21 22 23	as the Executive Officer of the Board of Pharma  2. On or about August 22, 2008, the Bo  Consumer Affairs issued Intern Pharmacist Region	cy, Department of Consumer Affairs.  oard of Pharmacy (Board), Department of stration Number INT 22538 to Gerardo Castillo nt). The Intern Pharmacist Registration was in
21 22 23 24	as the Executive Officer of the Board of Pharma  2. On or about August 22, 2008, the Bo Consumer Affairs issued Intern Pharmacist Regi also known as Gerardo Castillo Rico (Responde	cy, Department of Consumer Affairs.  oard of Pharmacy (Board), Department of stration Number INT 22538 to Gerardo Castillo nt). The Intern Pharmacist Registration was in
21 22 23 24 25	as the Executive Officer of the Board of Pharma  2. On or about August 22, 2008, the Bo Consumer Affairs issued Intern Pharmacist Regi also known as Gerardo Castillo Rico (Responder full force and effect at all times relevant to the consumer of the consu	cy, Department of Consumer Affairs.  oard of Pharmacy (Board), Department of stration Number INT 22538 to Gerardo Castillo nt). The Intern Pharmacist Registration was in
21 22 23 24 25 26	as the Executive Officer of the Board of Pharma  2. On or about August 22, 2008, the Bo Consumer Affairs issued Intern Pharmacist Reginalso known as Gerardo Castillo Rico (Responder full force and effect at all times relevant to the classical strength of the classical strength	cy, Department of Consumer Affairs.  oard of Pharmacy (Board), Department of stration Number INT 22538 to Gerardo Castillo nt). The Intern Pharmacist Registration was in

#### **JURISDICTION**

 This Accusation is brought before the Board under the authority of the following laws. All sections references are to the Business and Professions Code unless otherwise indicated.

#### STATUTORY PROVISIONS

4. Section 477 of the Code states:

As used in this division:

- (a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."
- (b) "License" includes certificate, registration or other means of engage in a business or profession regulated by this code.
- 5. Section 4301 states in relevant part, that:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (j) The violation of any of the statutes of this state, of any another, or of the United States regulating controlled substances or dangerous drugs.
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
- 6. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

7.

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact. . . .

Health and Safety Code section 11173, subdivision (a) states, in part:

#### <u>DRUG</u>

8. "Alprazolam" (also know as Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

#### COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FIRST CAUSE FOR DISCIPLINE

#### (Dishonest Acts)

- 10. Respondent has subjected his license to disciplinary action under Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows:
- 11. On or about May 23, 2012, the Board received a *CVS/Pharmacy Notification of Suspected Controlled Substance Theft or Significant Lost* report. The report stated that on or about May 19, 2012, while working at a CVS Pharmacy, Respondent was apprehended with a bottle of alprazolam 2 mg. Respondent admitted to opening the seal of the bottle and attempting to remove the medication from the pharmacy without a valid prescription, without intention of paying for it and to use the medication to possibly harm himself. The alprazolam bottle was a 100 count bottle. According to the pharmacist-in-charge, only twenty-one (21) pills were confiscated from Respondent and the remaining seventy-nine (79) pills were not accounted for. Respondent was terminated from his job at CVS Pharmacy on or about May 29, 2012, for the theft of alprazolam.

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### SECOND CAUSE FOR DISCIPLINE

#### (Unlawful Possession of Dangerous Drug/Controlled Substance)

12. Respondent is subject to disciplinary action under section 4301, subdivision (j) on the grounds of unprofessional conduct, in that Respondent unlawfully possessed a dangerous drug and controlled substance, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022, as more fully set forth in paragraph 11, above.

## THIRD CAUSE FOR DISCIPLINE

## (Violation of Statute Regulating Controlled Substance)

13. Respondent has subjected his license to disciplinary action under Code section 4301 subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and Safety Code section 11173, subdivision (a), (obtaining or attempt to obtain controlled substances without a prescription), as set forth in paragraph 11, above.

## FOURTH CAUSE FOR DISCIPLINE

## (Violation of Pharmacy Laws)

14. Respondent is subject to disciplinary action under section 4301, subsection (o) in that Respondent violated the laws and regulations regulating pharmacists, as more fully set forth in paragraphs 10-12, above.

## 

#### PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 1. Revoking or suspending Intern Pharmacist Registration Number INT 22538, issued to Gerardo Castillo also known as Gerardo Castillo Rico;
- Ordering Gerardo Castillo also known as Gerardo Castillo Rico to pay the Board of 2. Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 5/9/13

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

SA2012108697